

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of:

Numbering Resource Optimization

CC Docket No. 99-200

**RESPONSE OF THE CALIFORNIA PUBLIC UTILITIES
COMMISSION AND THE PEOPLE OF THE STATE OF
CALIFORNIA**

The California Public Utilities Commission and the People of the State of California (CPUC or California) respond here to the Petition for Emergency Relief (petition) filed November 22, 2005 by the South Bay Cities Council of Governments, The Telephone Connection of Los Angeles, and the Telephone Connection Local Services, LLC. (hereafter, collectively, “petitioners” or “filing parties”). Through the petition, the filing parties collaterally challenge a California order in which the CPUC adopted a plan to implement an all-services overlay in the Los Angeles metropolitan area in the geographic region currently covered by the 310 area code.¹ The new overlay area code would be the 424 NPA.

¹ See *CPUC Decision 05-08-040, mimeo*, mailed August 29, 2005; hereafter *Overlay Decision*.

In their emergency filing, petitioners ask the FCC for relief in two forms. First, petitioners ask the FCC to “immediately issue an order directing [the CPUC] to stay implementation of its *Overlay Decision* regarding an all-services area code overlay in the 310 area code, while the FCC reviews the CPUC’s compliance with federal numbering rules and guidelines”.² Second, the petition asks the FCC to issue “a declaratory ruling that the CPUC’s *Overlay Decision* is not in compliance with the FCC’s rules and decision regarding implementation of area code overlay dialing patterns. Specifically, petitioners ask the FCC to direct the CPUC to do the following:

- (a) Implement 10-digit overlay dialing in the geographic area currently served by the 310 NPA, with permissive 1+10 dialing; and
- (b) Apply the 10-digit dialing mandate amongst all affected carriers and customers in the current 310 NPA, regardless of the technology used.³

As they acknowledge, petitioners have already brought their arguments before the CPUC, and the CPUC has denied their request for relief as being without merit.⁴ While the FCC has the discretion to review this matter, the issues raised in the petition are squarely within authority the FCC has delegated to the states generally and to California specifically. The CPUC has exercised its delegated authority in a manner completely consistent with FCC’s numbering rules, and more particularly, with the rules

² Petition, p. 1.

³ Petition, p. 2.

⁴ *See CPUC Decision 05-11-033 (Rehearing Decision)*, mailed November 21, 2005. This decision is appended to the petition as Exhibit B.

the FCC has established for implementing an area code overlay. The relief petitioners seek should be denied.

I. Background

There is a rather remarkable irony to the petition filed with the FCC at this juncture. The CPUC approved implementing a new area code in the 310 region only after the California Commissioners were completely assured that every possible effort had been made to employ available conservation measures, and to use all available numbers in the 310. The CPUC's efficiency and conservation efforts often met with resistance from the industry, which sought implementation of a new area code. The FCC itself in at least two delegation orders expressed a desire that the CPUC "relieve" the 310, and not use further conservation measures as an excuse to delay such relief.⁵ Having now ordered relief via an overlay, the CPUC finds itself defending the action before the very agency that has pressed the CPUC to act sooner rather than later.

The 310 area code has been in jeopardy for a number of years. The CPUC initially adopted an overlay plan in 1998, and began implementation of that plan in 1999.⁶ In that original order, the CPUC adopted 1+10-digit dialing, with no specific reference to any distinction between wireline and wireless implementation of the overlay dialing pattern. Immediately after

⁵ See *Order*, FCC 99-248, CC Docket 96-98, NSD File No. L-98-136, released: September 15, 1999, ¶¶ 8 and 9; *Order* FCC 03-196, CC Docket 99-200, released: August 11, 2003, ¶¶ 11 and 12.

⁶ See *CPUC Decision 98-05-021*.

implementation of 1+10-digit dialing, in April 1999, the CPUC was deluged with a public outcry that ultimately prompted the CPUC to suspend implementation of the overlay and to pursue a program of comprehensive number conservation.⁷ Over the next six years, the CPUC successfully implemented many conservation measures, some via express delegated authority from the FCC, and others through the CPUC's existing state authority. As the quantity of numbers dwindled in the 310, the CPUC considered and rejected two proposed orders to initiate implementation of an area code split.

Finally, in March of 2005, a group of parties filed a petition with the CPUC, seeking modification of a prior order in which California had adopted a split as the "back-up" plan for implementing a new area code in the 310 region. The March 2005 petition proposed an all-services overlay for the 310, and in August of this year, the CPUC adopted the overlay plan.⁸ In the August decision, the CPUC set the schedule for implementing the overlay and imposed on the industry a requirement to conduct a Public Education Program (PEP) to inform residents and businesses in the 310 area of the impending overlay, which will be the first in California.

⁷ See *CPUC Decision 99-09-067*.

⁸ The petition to the CPUC proposed a "triggered overlay", which would have automatically set in motion implementation of an overlay when the number of remaining NXX codes reached a set floor. The CPUC ordered implementation of an overlay without use of a trigger.

In the August 2005 *Overlay Decision*, the CPUC addressed the FCC's requirement that all calls in an overlay area code must be dialed with 10, not 7, digits.⁹

The requirement for the area code to be dialed along with the seven-digit line number (i.e., 10-digit dialing) was originally required by the FCC, and also adopted by [the CPUC] to produce competitive neutrality among carriers whose numbers were subject to an area code overlay. Absent this requirement, the dialing burden of the new overlay area code would disproportionately disadvantage customers of carriers that could not obtain numbers in the established area code.¹⁰

With these comments, the CPUC rejected a proposal by opponents of the overlay who urged the CPUC to seek authority from the FCC to implement the overlay with 7-digit, rather than 10-digit, dialing. Petitioners have characterized this action as a failure to comply with FCC's numbering rules, specifically the "rule" requiring that all calls in an overlay area code must be dialed with 10 digits. Petitioners' assertion, while on its face *literally* correct, ignores the historical and technical context in which the FCC imposed the requirement. Further, the petition acknowledges but then discounts the fact that other states also have adopted a 1+10-digit dialing pattern for specific overlays. We address these points below.

II. THE FCC SHOULD DENY THE REQUEST FOR A STAY BECAUSE PETITIONERS FAIL TO MEET THE TEST FOR A STAY

Petitioners ask that the FCC stay the CPUC's *Overlay Decision*. The FCC should deny petitioners' request as they have not made even a

⁹ See *Second Report & Order*, ¶¶ 286, 287.

¹⁰ *Overlay Decision*, p. 50.

semblance of a case for the Commission to grant a stay.¹¹ Petitioners note that “an injunction may issue even if the arguments” supporting one or more the prongs in the test for a stay are “less compelling”, as long as “the arguments for one factor are particularly strong”.¹² The facts petitioners offer to show they have met the cited four-pronged test, however, show the opposite and certainly are not “particularly strong”.

First, the filing parties are not likely to succeed on the merits. Second, not only will petitioners not suffer irreparable harm absent a stay, they will suffer no harm. Third, a stay most definitely will harm other interested parties, as will be demonstrated by the filings the FCC likely will receive from other parties in response to the Public Notice. And finally, a stay would injure, not serve, the public interest. Each of these arguments is addressed separately.

A. Petitioners Are Not Likely to Succeed on the Merits

Petitioners are not likely to prevail on the merits because, contrary to their representations, the CPUC has complied with the FCC’s numbering rules. Specifically, in this case, the CPUC has ordered 10-digit dialing in the geographic region to be covered by the 424 overlay. The problem for petitioners is that they wrongly believe the CPUC has “unilaterally change[d] the FCC’s numbering guidelines without first seeking a waiver”.¹³ This

¹¹ For purposes of this discussion, the CPUC will use the test petitioners claim is applicable. *See* Petition, pp. 4-5, citing various federal court precedents.

¹² Petition, p. 4.

¹³ Petition, p. 5.

conclusion is incorrect. The CPUC has not changed the FCC's numbering rules. Nor has the CPUC altered the North American Numbering Plan dialing pattern as adopted by the FCC. Rather, California has accommodated, as have many other states, the industry decision to program the wireline telecommunications network to include a 1+ prompt to inform the switch that the next three digits are an area code, and that the switch must read ten instead of seven digits. As will be explained in Section III.A of these comments, below, petitioners misconstrue the 1+ prompt as an eleventh digit added to the 10-digit dialing pattern.

B. Petitioners' Claims of Harm Are Purely Speculative and Lack Record Support

Petitioners assert that "they and the public stand to suffer irreparable injury if a stay is not issued".¹⁴ The primary support for this claim is that "[s]mall competitive carriers like TCLA [The Telephone Connection of Los Angeles] will be harmed because they will be required to expend significant funds in public education materials on the area code overlay starting on November 30, 2005".¹⁵ Petitioners offer no quantification of the "injury" that will result, nor do they offer any list of the "small competitive carriers" that will be caught in this alleged maelstrom. Throughout the proceeding before the CPUC which led to issuance of the *Overlay Decision*, petitioners provided no specific, detailed

¹⁴ Petition, p. 9.

¹⁵ The CPUC is puzzled by this particular claim, as the Public Education Program the CPUC ordered the industry to conduct begins in this quarter with an initial notice to be sent out to customers this month.

information on what particular harm they would suffer if the CPUC required 1+10 dialing for the proposed overlay. Following suit, they have failed to provide any such information to the FCC in their petition.

In addition, the CPUC has seen no groundswell of support for TCLA in its campaign to force the wireline network to reprogram switches to eliminate the 1+ in the geographic region affected by the overlay. So far as the CPUC is aware, other small competitive carriers are much *more* concerned about their ability to obtain telephone numbers, an ability that will be severely constrained if not choked off altogether if the 310 NPA runs out of numbers before the 424 overlay NPA is opened.

Further, all carriers in the geographic area affected by the overlay will be expected to contribute to the CPUC-ordered PEP based on the number of thousand-blocks each carrier holds. They will have to do so whether there is 1+ or 10-digit dialing. In general, smaller carriers have fewer thousand-blocks unless they are hoarding numbers. Therefore, small carriers will be contributing a nominal amount to the PEP. Currently, the CPUC-approved budget for the PEP is \$401,000, which will be spread among all carriers with numbering resources in the 310 NPA.¹⁶ Since the PEP is just beginning, and most of the publicity is scheduled for the second and third quarters of 2006, staying the CPUC *Overlay Decision* at this juncture will delay only a small portion of the overall costs of the PEP.

¹⁶ *Overlay Decision*, p. 43.

Petitioners also claim “the constituents of the SBCCOG [South Bay Cities Council of Governments] will be harmed because there will be significant customer confusion if the [PEP] starts at the end of [November] and then is later changed due to an adverse decision on the CPUC’s actions”.¹⁷ Again, because most of the public outreach will be occurring in the spring and early summer of 2006, the FCC has ample time to decide this matter without bringing to a halt the long-awaited implementation of a new area code to relieve the 310 NPA.

Petitioners have failed to meet the test for a stay, as they have offered no evidence to bolster their claim of harm. The filing parties have merely asserted potential harm without any record support for the claim.

C. A Stay Will Substantially Harm Other Interested Parties

Here, too, petitioners’ claim is completely without support. Indeed, exactly the opposite is true. Should the FCC stay implementation of the 424 overlay, carriers may well be unable to obtain numbers in the existing 310 NPA for some period of time before the 424 is opened. As it is, the quantity of numbers in the 310 is extremely low. Any further delay in opening the 424 will only lengthen the period during which a new supply of numbers will be unavailable to TCLA and all other carriers providing service in the 310. It is unfathomable how lengthening the period in which numbers could be unavailable would benefit the interests of other parties. To the contrary,

¹⁷ Petition, p. 10.

their business interests would be substantially harmed. Petitioners have not met this prong of the test.

D. The Equities and the Public Interest *Do Not* Favor a Stay

Petitioners do not even attempt to meet this prong. Their argument in support of this element of the test merely repeats that the CPUC has failed to comply with federal law and therefore, the FCC should whip the CPUC into shape by granting the petition and setting us on the right path. Otherwise, “the Bureau would in essence be giving a signal to all states that they can go their own way, and not follow federal guidelines when they choose”.¹⁸ Again, the facts show that the opposite is true.

As noted above, the interests of the other interested parties would be substantially harmed if the FCC grants the petition. In addition, those who live and work in the geographic region covered by the overlay would be adversely affected. As the FCC has noted on more than one occasion, “[u]nder no circumstances should consumers be precluded from receiving telecommunications services of their choice from providers of their choice for a want of numbering resources”.¹⁹ More specifically, in delegating additional authority to California in 2003, the FCC underscored the need for relief in the 310 NPA. “Because of the severe shortage of numbering resources available in the 310 and 909 area codes, granting this petition will not

¹⁸ Petition, p. 11.

¹⁹ *See Order*, FCC 99-248, CC Docket 96-98, NSD File No. L-98-136, released: September 15, 1999, ¶ 9.

obviate the need for immediate relief in these area codes.”²⁰ The public interest will be harmed, not served, by a further delay in opening the 424 overlay area code. The FCC should deny the relief petitioners request.

III. THE 1+ IS NOT A PART OF THE NORTH AMERICAN NUMBERING PLAN DIALING PATTERN

A. The 1+ Prompt Is Not Part of the Dialing Pattern

The North American Numbering Plan dialing pattern is represented as follows: NXX-NXX-XXXX. The “N” designation represents a digit from 2 to 9, while the “X” designation represents a digit from 0 to 9. In addition, the positions in that representation are as follows: ABC-DEF-GHIJ. When area codes first appeared in 1947, area codes had only a 0 or a 1 in the “B” digit position.²¹ In the early 1990’s, BellCore, which then assigned area codes, notified the industry, the FCC, and the states that the supply of area codes with only a 0 or a 1 in the B digit position was exhausting. As a consequence, the B digit would have to be “released”, so that other numbers could be used in that position, thus expanding the supply of area codes exponentially.

In order to accommodate the B-digit release, the telecommunications industry had to reprogram switches nationwide to accommodate a B digit

²⁰ *See Order*, FCC 03-196, CC Docket 99-200, released: August 11, 2003, ¶ 18. It is correct that the CPUC delayed implementing a new area code in the 310 region while it pursued appropriate number use and conservation efforts. The time for relief, however, has now come and the FCC should allow implementation to move forward without further delay.

²¹ For example, the original three area codes in California were 213, 415, and 916. The original area code for New York City was, and remains, 212, while the original area code for Washington, D.C. was, and remains, 202.

with a number other than 0 or 1.²² To make that happen, the industry had to develop a means to inform the switch whether the first three digits in a dialed telephone number were an area code, or the NXX code in a seven-digit line number. The industry had two options – a pre-dialing prompt, or a post-dialing delay.

The pre-dialing prompt would involve dialing 1 plus the area code plus the seven-digit line number. Dialing the 1 before the ten-digit number would inform the switch that the next three digits were an area code, rather than an NXX code, and the call would be routed without delay.

The post-dialing delay option required programming each switch to wait for approximately four seconds after the seventh digit was dialed for more dialed numbers. If no additional numbers are dialed in the four seconds, then the switch routes the call within the area code from which the number originated. If additional digits are dialed, the switch is informed that the call should be routed to another area code.

Some telecommunications service providers elected to use the 1+ prompt as the means to inform the switch that the subsequent dialed number was to another area code. Other providers chose the post-dialing delay. In a number of cases, those that chose a post-dialing delay did so in conjunction with treating the 1+ prompt as a toll indicator. For those carriers, when the 1+ is dialed before a call, the prompt informs the switch that the dialed number is a toll or long distance call, and thus billable.

²² These new area codes were called “interchangeable area codes”.

In California, then-Pacific Bell (Pacific), elected to standardize its telephone network in the mid 1990's in anticipation of the move to interchangeable NPAs. As the regional number plan administrator, Pacific informed other service providers in the state that the standard for California would require carriers to use the 1+ prompt for inter-NPA calls. Pacific chose *not* to use the 1+ prompt as a toll indicator. When the move to interchangeable area codes occurred in 1995, Pacific did not have to reprogram its network, which already accommodated the new area codes because of the 1+ prompt.

B. The FCC Has Left to the States and the Industry the Issue of 1+10 Versus 10-Digit Dialing

Petitioners claim that the FCC rejected the use of a 1+10-digit dialing “approach to implementing overlays”.²³ Petitioners further assert that “to the best of our knowledge the FCC has not subsequently granted any waivers of this requirement”.²⁴ Again, petitioners’ argument simply misses the mark.

As petitioners note, the FCC did establish rules for states to follow in implementing an overlay.²⁵ One of the requirements was “mandatory 10-digit dialing by all customers between and within area codes in the area covered by the new code”.²⁶ The FCC explained the purpose of that rule as follows:

²³ Petition, p. 6.

²⁴ *Id.*

²⁵ Petition, p. 6. *See Second Report and Order And Memorandum Opinion and Order*, FCC 96-333, released: August 8, 1996, ¶ 286.

²⁶ *Id.*

We are requiring mandatory 10-digit dialing for all local calls in area served by overlays to ensure that competition will not be deterred in overlay area codes as a result of dialing disparity. Local dialing disparity would occur absent mandatory 10-digit dialing, because all existing telephone users would remain in the old area code and dial 7-digits to call others with numbers in that area code, while new users with the overlay code would have to dial 10-digits to reach any customers in the old code.²⁷

It is clear from this excerpt, and the rest of paragraph 287 in the *Second Report and Order*, that in adopting this requirement the FCC was distinguishing between 10-digit dialing and *7-digit* dialing. At no point in the entire discussion of overlay requirements in the August 1996 *Second Report and Order* did the FCC even mention 1+10-digit dialing. Nor does such a distinction appear anywhere in the Commission's published rules for implementing an overlay.²⁸

The reason for that omission is simple. The FCC left to the industry and the states decisions on how to implement the transition to interchangeable NPAs. The FCC has issued no order directing carriers to use the 1+ prompt, or to use a post-dialing delay. The FCC's determination to leave the matter to the industry and the states has resulted in some carriers using one approach and others using the alternative approach. For example, Texas is one of many states that uses 1+ as a toll indicator and not as the means to accommodate interchangeable NPAs. California, as stated above, and New York chose the 1+ prompt. Indeed, when New York introduced its first overlay in the mid-1990's, upstate New York was using a 1+ prompt,

²⁷ *Ibid.*, ¶ 287.

²⁸ See 47 C.F.R. § 52.19.

while downstate had the post-dialing delay. At some point, the New York Public Service Commission standardized the approach, and adopted the 1+ prompt statewide. Nowhere has the FCC stepped in and told any state which approach to adopt.

C. Many Other States Employ 1+10 Digit Dialing

Petitioners cite to a New York Public Service Commission (NYPSC) decision which proposed to implement an overlay with 7-digit dialing.²⁹ The NYPSC, as petitioners correctly observe, took to the Second Circuit U.S. Court of Appeals its quest to maintain 7-digit dialing for an overlay.³⁰ Ultimately, the NYPSC lost the fight, and was required to implement its overlay with 10-digit dialing.³¹

What is missing from petitioners' account is that, after losing its battle in the Second Circuit, the NYPSC implemented the overlay in question with *1+10*-digit dialing. Indeed, as noted above, New York State now has the 1+ prompt in place statewide. Again, the point of the argument between New York and the FCC was New York's desire to implement an overlay with *7-digit* dialing as opposed to 10-digit dialing. The 1+ was never even discussed in the course of the proceeding and was not an issue for the NYPSC or the Second Circuit Court.

Illinois also has implemented overlays using 1+10 digit dialing, as have other states. So far as the CPUC is aware, no carrier challenged the use of the 1+ prompt in implementing those overlays. So far as the CPUC is aware, petitioners' challenge is the first by any party anywhere in the country. The challenge has been made long after the boat on overlay implementation has sailed in other states. It is a mystery to the CPUC why

²⁹ Petition, p. 7.

³⁰ *Id.*

³¹ *Id.*

this issue should be raised here when other states have successfully implemented overlays with the 1+ prompt without controversy about that element of the overlay.

D. There is No Dialing Disparity Between Wireline and Wireless Carriers

Petitioners assert that allowing wireless customers to dial 10-digits in the area covered by the new overlay gives them a competitive advantage denied to wireline carriers whose networks require the 1+ prompt.³²

Petitioners offer no evidence to support this claim. Indeed, it is counterintuitive to assume that a customer otherwise content with his/her service provider will suddenly drop a wireline carrier and switch to a wireless provider simply because the wireless network can accommodate 10-digit dialing. In fact, the wireless industry has informed the CPUC informally that their networks accommodate *both* 10-digit dialing and the 1+ prompt. Consequently, the publicity for the overlay will instruct customers only to dial 1+. It will be left to wireless carriers to inform their customers of the possibility that their networks accommodate 10-digit dialing.

The CPUC has merely instructed carriers to maintain the dialing status quo. Carriers who today require the 1+ prompt for inter-NPA calls will continue to require the 1+. Carriers who today accommodate 10-digit dialing will be allowed to continue that practice. As the CPUC stated, “[t]hus, the overlay will simply continue area code dialing protocols that already exist with respect to wireline and wireless customers”.³³ The CPUC will continue the discussion, however, by taking comments from parties on whether the

³² Petition, p. 8.

³³ *Overlay Decision*, p. 49.

state should move towards a statewide 10-digit dialing protocol by replacing the 1+ prompt with a post-dialing delay.

IV. CONCLUSION

In reviewing petitioners' claims as set forth in their petition, and as they have argued them before the CPUC, an old expression springs to mind. If ever there were a tempest in a teapot, this is it. Petitioners simply appear to lack any clear understanding of the evolution of 1+10 dialing in the United States generally, and in California, in particular. They also misunderstand the purpose and function of the 1+, and therefore, incorrectly assume that the CPUC has violated FCC numbering rules. The CPUC has done no such thing. The FCC should deny petitioners' request on all points, and should allow implementation of the CPUC's *Overlay Decision* to proceed with all due speed.

Respectfully submitted,

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